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Labor Law - Picketing a Home - Anti-Injunction Statutes

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LABOR LAW—PICKETING A HOME—ANTI-INJUNCTION STATUTES —A private chauffeur was discharged, allegedly for union activity. The union had the home of the offending employer picketed by its representative who was arrested and convicted on a charge of disorderly conduct. Defendant argued that the public policy expressed in the Minnesota anti-injunction statute[1] made peaceful picketing in a labor dispute legal. *Held,* conviction affirmed. The statute relied on by the defendant applies only to industrial disputes. The home is not a business, trade, or occupation within the meaning of the anti-injunction statute. *State v. Cooper,* 205 Minn. 333, 285 N.W. 903 (1939).

The Norris-LaGuardia Act[2] and similar anti-injunction statutes climaxed a bitter fifty years' battle against the injunction as a weapon in labor disputes.[3] Since the greatest obstacle in the path of those wishing to abolish this weapon has been narrow construction by the courts of similar legislation in the past,[4] the latest anti-injunction statutes are couched in the broadest language possible.[5]

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period than five years. Hill v. Missouri Pac. Ry. Co., 8 F. Supp. 80 (D.C. La. 1933) noted in (1935) 9 Tulane L. Rev. 444; Page v. New Orleans Public Service, 184 La. 617, 167 So. 99 (1936). It has been recently stated that a contract of employment for more than five years is not void ab initio, but is unenforceable only in so far as it is in excess of five years. Shaughnessy v. D'Antoni, 100 Fed. (2d) 422 (C.C.A. 5th, 1938), noted in (1939) 13 Tulane L. Rev. 467. But this case should have no application here as the employee attempted to bind himself for 10 years, whereas a professor does not bind himself for any specific time. See Note (1935) 9 Tulane L. Rev. 444.

In cases arising under the Louisiana Teachers' Tenure Act, La. Act 100 of 1922, § 48 as amended by La. Act 58 of 1936 [Dart's Stats. (1939) §§ 2267-2267.1], Art. 167 was not considered, and the parish boards have been held to the strict provisions of the Act giving life tenure to teachers employed for three years. Andrews v. Union Parish School Board, 184 So. 574 (La. App. 1938), affirmed in 191 La. 90, 184 So. 552 (1938); Read v. Union Parish School Board, 185 So. 67 (La. App. 1938). Marriage is not one of the grounds upon which a permanent teacher can be removed under the Louisiana Teachers' Tenure Act. State v. Jefferson Parish School Board, 191 La. 102, 184 So. 555 (1938). However, according to the Attorney General's opinion parish schools are not affected by La. Act 15 of 1940 (E.S.).

1. Minn. Stat. (Mason, Supp. 1936) §§ 4255-4260.23.

2. 47 Stat. 70 (1932), 29 U.S.C.A. §§ 101-115 (Supp. 1939).

3. Frankfurter and Greene, The Labor Injunction (1930).

4. Duplex Printing Press Co. v. Deering, 254 U.S. 443, 41 S.Ct. 172, 65 L. Ed. 349 (1921); American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184, 42 S.Ct. 72, 66 L.Ed. 189 (1921); Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n, 274 U.S. 37, 47 S.Ct. 522, 71 L.Ed. 916 (1927); Goldberg, Bowen & Co. v. Stablemen's Union, 149 Cal. 429, 86 Pac. 806, 8 L.R.A. (N.S.) 460 (1906); Bull v. International Alliance, 119 Kan. 713, 241 Pac. 459 (1925); Gevas v. Greek Restaurant Workers' Club, 99 N.J. Eq. 770, 134 Atl. 309 (1926); Heitkemper v. Central Labor Council, 99 Ore. 1, 192 Pac. 765 (1920). See also Frankfurter and Greene, op. cit. supra note 3.

5. Cf. Norris-LaGuardia Act, 47 Stat. 70, §§ 4, 13 (1932), 29 U.S.C.A. §§ 104, 113 (Supp. 1939).

Under these recent acts the courts are denied jurisdiction to issue injunctions against any peaceable non-fraudulent activity of parties in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee."[6] As long as a labor dispute as defined in the act[7] exists, the background of the dispute or motives involved are immaterial.[8] The question of the legality or illegality of the end does not arise,[9] and the fact that none of the plaintiff's employees are, or wish to become, members of the union engaged in the dispute makes no difference.[10]

The key to the applicability of such acts lies in the given definition of a labor dispute, which is, of course, subject to judicial interpretation. This involves two questions: (1) whether or not the purpose of the picketing has anything to do with wages, hours, working conditions or representation;[11] and (2) whether or not the relationship of the parties can give rise to a labor dispute within the intendment of the act. It is with this latter question that this note is primarily concerned.

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6. 47 Stat. 73, § 13c (1932), 29 U.S.C.A. § 113c (Supp. 1939). The Massachusetts anti-injunction statute leaves out the phrase "regardless of whether or not the disputants stand in the proximate relation of employer and employee." Mass. Gen. Laws (1935) c. 407. Therefore, it has been held that no labor dispute can exist under their act unless employees of the plaintiff-employer are involved. Simon v. Schwachman, 18 N.E. (2d) 1 (Mass. 1938); Quinton's Market v. Patterson, 21 N.E. (2d) 546 (Mass. 1939).

7. The Norris-LaGuardia Act, which is copied almost verbatim in most state acts, defines a labor dispute as follows: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 47 Stat. 73, § 13c (1932), 29 U.S.C.A. § 113c (Supp. 1939).

8. New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552, 58 S.Ct. 703, 82 L.Ed. 1012 (1938).

9. Wilson & Co. v. Birl, 27 F. Supp. 915 (E.D. Pa. 1939).

10. Senn v. Tile Layers Protective Union, 301 U.S. 468, 57 S.Ct. 857, 81 L.Ed. 1229 (1937); Lauf v. Shinner and Co., 303 U.S. 323, 58 S.Ct. 578, 82 L.Ed. 872 (1938); New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552, 58 S.Ct. 703, 82 L.Ed. 1012 (1938); Geo. B. Wallace Co. v. International Ass'n, 155 Ore. 652, 63 P. (2d) 1090 (1936); American Furniture Co. v. International Brotherhood, 222 Wis. 338, 268 N.W. 250, 106 A.L.R. 335 (1936). Contra: Simon v. Schwachman, 18 N.E. (2d) 1 (Mass. 1939); Feller v. Local 144, 121 N.J. Eq. 452, 191 Atl. 111 (1937); Safeway Stores v. Retail Clerks' Union, 184 Wash. 322, 51 P. (2d) 372 (1935).

11. For example, picketing for the purpose of retiring plaintiff's product from competition in that particular territory was held to be no labor dispute. Fehr Baking Co. v. Baker's Union, 20 F. Supp. 691 (W.D. La. 1937). Also, many courts hold that there is no labor dispute between a union and a neutral in cases of secondary boycotts. See Smith, Coercion of Third Parties in Labor Disputes—The Secondary Boycott (1939) 1 LOUISIANA LAW REVIEW 277, 301.

No distinction based on the size of the employer's business is made in the anti-injunction statute. Thus, where a union picketed a tile layer who employed a single non-union helper, for the purpose of making the employer cease work himself and give the job to a union man, a labor dispute was held to exist.[12] Similarly, where an attempt was made to organize a corporation owned and operated by four brothers and their mother without outside assistance, the dispute was held to be within the New York act.[13] However, if a person hires no one and does all the work himself, it has been held that no labor dispute with him can arise.[14]

The home and charitable institution present a slightly different problem. The act has been held inapplicable to charitable institutions. This ruling is based primarily on the view that an institution operated on a non-profit basis is not a trade, industry, or occupation.[15] Since the court found no labor dispute cases involving such institutions prior to the passage of the acts, it concluded that the legislature could not have had them in mind. The same type of reasoning was applied in the instant case.

While the exploitation of labor is not normally associated with small businesses, charitable institutions or the home, the possibility of abuse in these fields is present. Whether the normal remedies available in labor disputes should be allowed is a question which only time will answer. The caution and diversity of opinion on the subject are well illustrated by the principal case. Three judges felt that the home was not included in the act; two believed the decision on the point in question was unnecessary and should be reserved; and another dissented from the prevailing view.

Unquestionably, domestic help and employees of charitable institutions have a right to reasonable wages and hours, and organization is one means of protection against unfair treatment of such employees. On the other hand, employers of this type are not as well-equipped to fight back as are larger businesses. There

12. Senn v. Tile Layers Protective Union, 301 U.S. 468, 57 S.Ct. 857, 81 L.Ed. 1229 (1937).

13. Boro Park Sanitary Live Poultry Market v. Heller, 280 N.Y. 481, 21 N.E. (2d) 687 (1939).

14. Thompson v. Boekhout, 273 N.Y. 390, 7 N.E. (2d) 674 (1937); Bieber v. Bininbaum, 6 N.Y.S. (2d) 63 (Sup. Ct. 1938); Pitter v. Kaminsky, 7 N.Y.S. (2d) 10 (Sup. Ct. 1938). Contra: Rohde v. Dighton, 27 F. Supp. 149 (W.D. Mo. 1939).

15. Jewish Hospital of Brooklyn v. Doe, 252 App. Div. 581, 300 N.Y. Supp. 1111 (1937), criticized in Note (1937) 7 Brooklyn L. Rev. 380.

is danger that in these cases labor unions, because of the weakness of their foe, may do more harm than good if they are sufficiently encouraged. Experience in the building trades and associated industries has proved that labor organizations, when given absolute control, are not above extortion and similar practices.[16] To deny the small businessman the use of the injunction may put him completely at the mercy of the labor racketeer. Also, the possibility that labor's cause may be hurt by going further than the public believes justified should not be overlooked.

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TUTORSHIP—RIGHT OF SURVIVING PARENT TO CUSTODY OF CHILD—A habeas corpus proceeding was instituted by the father to obtain the tutorship of his minor child. The trial judge dismissed the writ on the grounds that: (1) the child was being cared for properly by its grandparents; and (2) the custody of a child of such a tender age should not be changed merely because the father came into court to ask for it. *Held*, affirmed. *State ex rel. Landry v. Robin*, 192 So. 349 (La. 1939).[1]

As a general rule, upon the death of either parent, the other is entitled to the tutorship of minor children as of right.[2] Only in the event of "unfaithfulness of his administration, notoriously bad conduct, and abandonment of his children and failure to support and maintain them for more than one year" can the father be excluded from the tutorship.[3] In the earlier cases this right was regarded as absolute unless the specific causes of exclusion were proven.[4] Later, however, the welfare of the child became the determining factor in awarding letters of tutorship[5] and it is now

16. For a discussion of "labor racketeering," see (1937) 37 Col. L. Rev. 993.

1. Three justices dissented from the holding of the majority. On rehearing, the case was remanded for further finding of facts with two justices dissenting.

2. Art. 250, La. Civil Code of 1870.

3. Art. 305, La. Civil Code of 1870.

4. Tutorship of Kershaw, 5 Rob. 488 (La. 1843). See also In re Tutorship of Upton, 16 La. Ann. 175 (1861).

5. La. Act 79 of 1894 [Dart's Stats. (1939) § 4887] provides: "Whenever an affidavit shall be made before any district judge that the physical or moral welfare of any child in the state is seriously endangered by the neglect, or abuse, or the vicious, or immoral habits, or associations, of its parents, or parent, tutor, or other person having the custody of such child, or that the physical or moral welfare of any such child is seriously endangered by the inability, refusal or neglect of such parents, parent or tutor or custodian to properly care for such child, it shall be the duty of such district judge to summon witnesses, as to the facts set forth in such affidavit, and also such parents, or parent, tutor or custodian of such child, and if the proofs be